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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CIVIL ACTION NO. 05-0540

CRIM. NO. 91-50088-01

VERSUS

JUDGE DONALD E. WALTER

CEDRIC J. SMITH

MAGISTRATE JUDGE HORNSBY

O R D E R

Before this Court is a Motion to file an out of time appeal, captioned as a Notice of Out-of-Time Appeal [Doc. #224] filed by defendant, Cedric J. Smith, wherein he asserts that although the Order denying his §2255 motion was entered on October 4, 2005, he did not receive the Order until October 20, 2005 due to postal service complications and a prison lock-down in the Beaumont, Texas area following Hurricane Rita.

Federal Rule of Appellate Procedure 4(a)<sup>1</sup> provides in pertinent part that a district court may extend the time to file a notice of appeal if: (1) a party moves for such an extension of time within 30 days after the time prescribed by Rule 4(a)(1) expires; and (2) that party shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A). Rule 4(a) further provides that any extension under this Rule may not exceed 30 days after the prescribed time in Rule 4(a)(1) or 10 days after the date when the order granting the motion for extension of time is entered, whichever is later. Fed. R. App. P. 4(a)(5)(C).

In the case sub judice, Smith filed his motion for extension of time within 60 days of the

<sup>1</sup>Rule 11 of the Rules Governing Section 2255 Proceedings for the United States District Courts provides that "Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules."

order denying his §2255 motion being entered, and he has shown excusable neglect for failing to timely file his notice of appeal.

Accordingly, **IT IS ORDERED** that defendant's Motion for Extension of Time to File an Appeal [Doc. #224] be and is hereby **GRANTED**, and defendant has until **December 5, 2005**, or **ten days after the date this Order is entered**, whichever is later, within which to file his notice of appeal.

**THUS DONE AND SIGNED** in Shreveport, Louisiana, this 11 day of November, 2005.

  
DONALD E. WALTER  
UNITED STATES DISTRICT JUDGE